

ORIGINAL

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| <b>State Bar Court of California</b><br><b>Hearing Department</b><br><b>Los Angeles</b><br><b>DISBARMENT</b>   |   |   |
|--|---|---|
| <b>Counsel For The State Bar</b><br><br>Eli D. Morgenstern<br>Deputy Trial Counsel<br>The State Bar of California<br>Office of the Chief Trial Counsel<br>1149 South Hill Street<br>Los Angeles, CA 90015-2299<br>(213) 765-1334<br><br>Bar # 190560 | <b>Case Number(s):</b><br>09-O-19445<br><br><b>PUBLIC MATTER</b>  | <b>For Court use only</b><br><br><b>FILED</b><br><b>JUN 03 2011</b><br><br>STATE BAR COURT<br>CLERK'S OFFICE<br>LOS ANGELES |
| Eric Y. Nishizawa<br>Law Offices of Eric Y. Nishizawa<br>14028 Tahiti Way #P-46<br>Marina Del Rey, CA 90292<br>(213) 489-0910<br><br>Bar # 140344  | Submitted to: <b>Assigned Judge</b><br><br>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND<br>DISPOSITION AND ORDER APPROVING; ORDER OF<br>INVOLUNTARY INACTIVE ENROLLMENT |   |
| In the Matter of:<br>Ricardo A. Torres, II<br><br>Bar # 164848<br><br>A Member of the State Bar of California<br>(Respondent)  | <b>DISBARMENT</b><br><br><input type="checkbox"/> PREVIOUS STIPULATION REJECTED   |   |

**Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.**

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted June 7, 1993.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.



- (3) All investigations or proceedings listed by case number in the caption of this stipulation are resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of (10) pages, not including the order.
- (4) A statement of acts or omissions acknowledged by respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☒ Costs to be awarded to the State Bar.
  - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - ☐ Costs are entirely waived.
- (9) **ORDER OF INACTIVE ENROLLMENT:**  
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1) ☒ **Prior record of discipline**
- (a) ☒ State Bar Court case # of prior case
  - (b) ☒ Date prior discipline effective
  - (c) ☒ Rules of Professional Conduct/ State Bar Act violations:
  - (d) ☒ Degree of prior discipline
  - (e) ☒ If respondent has two or more incidents of prior discipline, use space provided below:  
  
See pages 7-8 for discussion re: Respondent's prior record of discipline.
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☒ **Trust Violation:** Trust funds or property were involved and respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property. See page 8 for further discussion re: Trust Violation.

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- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See page 8 for further discussion re: Harm.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. See page 8 for further discussion re: Candor/Cooperation.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

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- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**D. Discipline:**        **Disbarment.**

**E. Additional Requirements:**

- (1) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (2) ☒ **Restitution:** Respondent must make restitution to Lawrence Prijoles in the amount of \$ 89,211.47 plus 10 percent interest per year from September 19, 2009. If the Client Security Fund has reimbursed Mr. Prijoles for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than N/A days from the effective date of the Supreme Court order in this case.
- (3) ☐ **Other:**

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      Ricardo Anthony Torres II

CASE NUMBER(S):                      09-O-19445

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that he is culpable of violations of the specified statute.

**Case No. 09-O-109445 (Complainant: Lawrence Prijoles)**

**Facts:**

1. On or about March 28, 2005, Lawrence Prijoles ("Prijoles") and his wife, Rachel Prijoles, were driving in an automobile in San Diego County when they were involved in a head-on traffic collision with John Peter Cannon ("Cannon"). Cannon was driving under the influence of alcohol and caused the collision. The Prijoleses suffered serious personal injuries as a result of the collision.
2. At all relevant times to the stipulated facts herein, Respondent and three other law firms represented the Prijoleses in their personal injury claims arising out of the March 28, 2005, automobile accident.
3. Progressive Management Systems, Access Medical, and Scripps (collectively, the "medical providers") provided medical services to the Prijoleses.
4. On July 24, 2009, following a jury trial, the Prijoleses received a general damage verdict against Cannon in the sum of \$523,962.67, and a finding for punitive damages. On July 30, 2009, prior to a trial on the issue, Prijoleses agreed to accept \$125,000 in punitive damages against Cannon. In total, the Prijoleses recovered \$648,962.67 (\$523,962.67 + \$125,000).
5. In August 2009, Respondent received a check from Cannon in the sum of \$125,000 made payable to "Ricardo A. Torres, II, CTA, Lawrence Prijoles and Rachel Prijoles." On August 15, 2009, Respondent deposited the check in his client trust account at Union Bank ("CTA").
6. In August 2009, Respondent also received two settlement drafts from Encompass Insurance Company ("Encompass"), Cannon's insurance company. One draft was in the sum of \$302,815, and was made payable to "Ricardo A. Torres II and Rachel Prijoles." The other draft was in the sum of \$221,147.67, and was made payable to "Lawrence Prijoles & Law Office of Ricardo A. Torres, II, Client Trust Account."
7. On August 19, 2009, Respondent deposited the two settlement drafts from Encompass in the CTA.

8. In total, Respondent deposited \$648,962.97 in the CTA, which he was required to disburse to, and on behalf of, the Prijoleses.

9. As of September 19, 2009, Respondent had disbursed from his CTA a total of \$559,746.50 to, and on behalf of, the Prijoleses. This sum included all of the attorney fees and costs which Respondent and the other attorneys were entitled, as well as the expert fees.

10. To date, Respondent has not paid any of the medical providers. Respondent misappropriated the remaining portion of the Prijoleses' settlement funds, or \$89,216.47 (\$648,962.97-\$559,746.50).

11. To date, Respondent has not provided Prijoles with an accounting of the settlement funds.

### **Conclusions of Law:**

By misappropriating \$89,216.47 of the Prijoleses' settlement funds, Respondent committed an act(s) of moral turpitude, dishonesty, or corruption in wilful violation of Business and Professions Code section 6106.

### **PENDING PROCEEDINGS.**

The disclosure date referred to on page 2, paragraph A(7), was April 13, 2011.

### **AGGRAVATING CIRCUMSTANCES.**

#### **1. Prior Record of Discipline**

A prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).) Respondent has been a member of the State Bar since June 7, 1993, and has been disciplined on two prior occasions.

On December 17, 2001, the California Supreme Court ordered (S101274), among other things, that Respondent be suspended from the practice of law for one year, stayed, and placed on probation for three years on condition that he be actually suspended for 30 days for misconduct that he committed in four State Bar Initiated matters. Respondent's misconduct included violating: (i) rule 4-100(A) of the Rules of Professional Conduct ("rule") by commingling funds and using his CTA to issue checks for his personal use; (ii) Business and Professions Code section 6068(i) ("section") by failing to cooperate in State Bar investigations; and (iii) section 6106 by issuing checks from his client trust account when there were insufficient funds to cover the checks. (Supreme Court Case No. S101274; State Bar Court Case Nos 99-O-11923, 99-O-13035, 00-O-11506; 00-O-12741).

On February 1, 2011, the State Bar Court filed its Decision in Case No. 09-O-14520, a default disciplinary matter. In the Decision, the State Bar Court recommended, among other things, that Respondent be suspended from the practice of law for a minimum of one year and remain suspended until the following requirements are satisfied: (i) Respondent makes restitution to the complainant, or reimburses the Client Security Fund to the extent of any payment from the fund to the complainant, and furnish satisfactory proof to the State Bar's Office of Probation; (ii) the State Bar grants a motion to terminate his suspension pursuant to the Rules of Procedure of the State Bar; and (iii) if he remains suspended for two years or more as a result of not satisfying the preceding requirements, Respondent

must also provide proof to the Stat Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law before his suspension will be terminated.

Respondent's misconduct in Case No. 09-O-14520 included violating: (i) section 6106 by making misrepresentations of fact to his client; (ii) rule 4-100(B)(3) by not providing his client with an accounting of the fees that the client had paid to him; (iii) rule 3-700(D)(2) by failing to promptly refund any portion of the unearned fee that the client had paid to him upon termination of his employment; (iv) rule 3-700(D)(1) by failing to return the client file to the client; and (v) section 6068(i) by failing to cooperate in a State Bar investigation.

To date, the Supreme Court has not issued its order with respect to State Bar Case No. 09-O-14520.

## **2. Trust Violation**

Respondent's refusal or inability to account for the Prijoleses' settlement funds is a serious aggravating circumstance, in light of the fact that Respondent misappropriated \$89,216.47 of those funds. (Std. 1.2(b)(iii).)

## **3. Harm**

Respondent's misappropriation of the Prijoleses' settlement funds has harmed them. (Std. 1.2(b)(iv).)

## **MITIGATING CIRCUMSTANCE.**

### **1. Candor and Cooperation**

Respondent's stipulation to the facts, his culpability, and his disbarment is a mitigating circumstance. (Standard 1.2(e)(v). See also, *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521.)

## **AUTHORITIES SUPPORTING DISCIPLINE.**

### **1. Standards**

Standard 1.7(b) of the Standards for Attorney Sanctions for Professional Misconduct ("Standards") provides that if a member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

Standard 2.2(a) provides that culpability of a member of wilful misappropriation of entrusted funds shall result in disbarment. Only if the amount of funds misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed.

Here, the amount of funds that Respondent misappropriated is not insignificant. The contrary is true. In addition, Respondent has been disciplined on two prior occasions. The mitigating circumstance



discussed above is not sufficiently compelling to justify a deviation from the Standards. The parties submit that Respondent's misconduct, and the aggravating circumstances surrounding the misconduct, warrant disbarment.

## **2. Case Law**

The Supreme Court has repeatedly held that disbarment is the usual discipline for the wilful misappropriation of client funds. (See, *Grim v. State Bar* (1991) 53 Cal.3d 21; *Edwards v. State Bar* (1990) 52 Cal.3d 28, 37; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221; and *Chang v. State Bar* (1989) 49 Cal.3d 114, 128)

## **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed him that as of April 13, 2011, the prosecution costs in this matter are approximately \$2,827. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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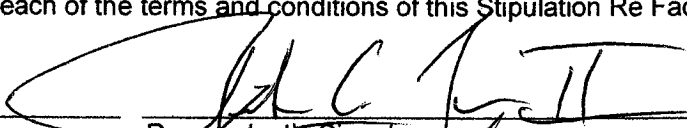
In the Matter of:  
RICARDO A. TORRES, II

Case number(s):  
09-O-19445

### SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

5/1/11  
Date

  
Respondent's Signature

RICARDO A. TORRES, II

Print Name

5/2/11  
Date

  
Respondent's Counsel Signature

ERIC Y. NISHIZAWA

Print Name

5/9/11  
Date

  
Deputy Trial Counsel's Signature

ELI D. MORGENSTERN

Print Name

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|  |                                      |
|--|--------------------------------------|
| In the Matter of<br><b>RICARDO A. TORRES, II</b> | Case Number(s):<br><b>09-O-19445</b> |
|--|--------------------------------------|

### ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☐ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☒ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

1) At page 5, restitution should be "\$89,216.47," and not "\$89,211.47." (See page 7).

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Respondent **RICARDO A. TORRES, II** is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 490(b) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

6-3-11  
Date

  
\_\_\_\_\_  
Judge of the State Bar Court  
**RICHARD A. HONN**

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on June 3, 2011, I deposited a true copy of the following document(s):

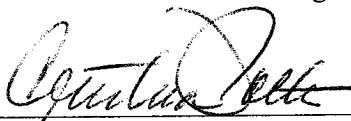
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND  
ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:
- ERIC Y. NISHIZAWA  
LAW OFC ERIC NISHIZAWA  
14028 TAHITI WAY #P-46  
MARINA DEL REY, CA 90292
- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:
- ☐ by overnight mail at , California, addressed as follows:
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.
- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:
- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Eli D. Morgenstern, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 3, 2011.

  
Cristina Potter  
Case Administrator  
State Bar Court